City of Lafayette
Public Meeting Agenda
City Council Special Joint Meeting
Circulation Commission and the Bicycle Pedestrian Advisory Committee

MINUTES

Lafayette Community Center -- Sequoia Room **April 14, 2008**
500 St. Mary's Road, Lafayette, California **6:30 p.m.**

1. CALL TO ORDER

Mayor Anderson called the meeting to order at 6:35 p.m.

2. ROLL CALL

Present: City Council: Mayor Anderson, Vice Mayor Tatzin, Councilmembers Andersson, Anduri and Federighi

Circulation Commission: Cindy Sevilla, Mary-Jane Wood, Ellen Poling, Gene Holit, Lynn Hiden

BPAC: Bart Carr, Claude Aiello, Bruce Allan, Patrick Clarkson

Absent: None

Staff: Steven Falk, City Manager; Mala Subramanian, City Attorney;, Leah Greenblat, Transportation Planner; Joanne Robbins, City Clerk

3. ADOPTION OF AGENDA

ACTION: It was M/S/C (Tatzin/Federighi) to adopt the agenda. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Anduri, Andersson, Federighi; Noes: None; Absent; None).

4. PUBLIC COMMENTS – None

5. PRESENTATION

A. **Circulation Commission and the Bicycle Pedestrian Advisory Committee Accomplishments for 2007/2008 and Goals for 2008/2009**
Recommendation: Receive and file.

Circulation Commissioner Hiden presented the Commission's staff report and work program, voiced concern that negotiations should be held with Moraga with the work of their Downtown Specific Plan, believed everyone should be mindful of what goes into both cities' downtowns as roads and soils are very constrained and roads cannot be widened.

Commissioner Poling questioned how far along both cities were in their downtown strategy planning schedules and suggested that coordination be done between both cities.

Commissioner Hiden voiced concerns about survivability of residents during emergency egress and ingress, the financial stability of the downtown, residents' indications that they will not shop downtown due to the cost of parking meters and overall congestion, and believed people will go elsewhere if the downtown is jammed up.

Mayor Anderson requested Commissioner's perspectives on their goals, and Commissioner Wood suggested the operation of a shuttle service which would run from 11:00 a.m. to 2:00 p.m. in the downtown to help relieving congestion and this might encourage people not to use their cars during that time period. She briefly discussed a proposal 13 years ago which did not meet with the approval of the existing Circulation Commission at that time.

Commissioner Sevilla agreed citizens have voiced concerns regarding increased traffic, traffic speeds, back-up, and believed that with over 300 units planned, combined with commercial, retail and apartments, the frustration levels in town would rise. She suggested the Council, Commissions and staff work to face the problem head on and work with the Town of Moraga in their plans. She also supported the building of a parking structure and the shuttle service.

Commissioner Holit echoed Commissioner Hiden's comments and believed that by making the downtown so complex and developed with vehicle traffic, people may not shop downtown which would affect the survivability of the downtown. He did not agree that the recent parking meters were a good idea, said the City seems to be populated with large SUV's which often cause congestion and no movement along the roads, and he also suggested the City do a better job with synchronization of lights.

BPAC Chair Bart Carr reported that the Committee has continued work to execute the new Bicycle Plan, have worked with the City to develop a signage plan for the downtown bike routes that would include signs of Class II and III routes, as well as pavement markings that will make them more obvious and appear safer to use. They have worked with staff to obtain grant funding, he and Claude Aiello support the downtown specific plan work by attending meetings and participating in the work, they plan a Bike to Work Day every year; they have an energizer station for bicyclists coming through town and have on-going plans to promote bike safety through a Youth Bike Rodeo. However, they have been challenged to find volunteer help to make the rodeo happen this spring, and therefore, it may occur later this spring or next fall depending upon the volunteer effort.

Regarding the specific plan, Chair Carr said he did not agree with Commissioner Hiden's comments, he appreciates greater density and hopes there could be greater density around the BART station. While he did not know what the right number is, he does not agree that for every new residence you create, it means two or three cars will constantly drive in the downtown and park. His personal opinion is that if the City builds higher density developments, people will walk and bike more with the concept built around a transit village design, and he is supportive of this.

Mayor Anderson said he appreciates all the work of the Circulation Commission and BPAC and noted they are the bodies who receive the initial pressure when development is proposed. He also sees a split in terms of what the downtown should and could be, and he believes this will need to be hashed out. There is a lot of pressure to see the downtown become denser, he believed that people will see opportunities for investment, development will come, and the City will need to address it within the strategic plan process, and he thanked both bodies for their work.

Councilmember Anduri said every so often he receives emails about what is expected to happen downtown, and he questioned what was expected to occur within the next three

months. Commissioner Hiden reported that from January to June, the following had or will occur: A downtown parking survey, analysis of a commuter guide development, traffic calming on Stanley, implementation of the Bike Plan and signage striping, the Lamorinda Action Plan update, traffic calming prioritization for 2008, the Lamorinda Fee and Finance Authority and review of a nexus study, Bike to Work Day, more downtown strategy work and traffic calming, and to be decided is Measure J and other spontaneous items which comes to them and requires discussion.

Commissioner Wood discussed her confusion in the explanation by Mr. Coe of a red light at Condit Road and Pleasant Hill Road. BPAC Member Clarkson said this was the first time he has heard about EBMUD and the closing of two lanes on the north side of Mt Diablo Boulevard going past the Reservoir. Councilmember Anduri believed ¾ of the town will discover this once under construction, and Vice Mayor Tatzin noted there is a signboard already up, and City Manager Falk said staff was also preparing an article for the Vistas.

Vice Mayor Tatzin thanked the Circulation Commission and BPAC for their work. Councilmember Andersson asked the BPAC about getting a route to include more progress on implementing the Aqueduct Trail, and Chair Carr said this was included in the long-range plan, but nothing was happening at the present time with this. Councilmember Anduri believed that most of the plan is dependent on funding and Ms. Greenblat said the City has received a grant to do bicycle lane striping and other work and a large part of the plan can be implemented just through striping and signage. Staff is trying to get the high priority projects in place, there will be a section of the Aqueduct Trail built in front of Woodbury, but they have not worked on the other sections yet. She said the feasibility study comes first and they will look at grant funding and apply for what fits with the planned projects.

Councilmember Federighi said she appreciates the issues involving traffic and circulation which are controversial and often emotional and the fact that the Commission and Committee receives a lot of early feedback and deals with it effectively prior to it coming to the Council.

BPAC member Clarkson said two bike paths are coming next through the downtown; one on Mt. Diablo Boulevard with arrows indicating that bikes share the road, and an alternate route that bypasses the downtown with a Bike Boulevard that provides access through the side streets.

6. ADJOURNMENT

ACTION: It was M/S/C (Tatzin/Federighi) to adjourn the meeting at 7:01 p.m. to the Regular City Council meeting.

APPROVED:

_____
Mike Anderson, Mayor

ATTEST:

_____
Joanne Robbins, City Clerk

City of Lafayette
Public Meeting Agenda
City Council Regular Meeting

MINUTES

Lafayette Community Center – Manzanita Room **April 14, 2008**
500 St. Mary's Road, Lafayette, California **7:00 p.m.**

1. CALL TO ORDER

Mayor Anderson called the meeting to order at 7:10 p.m.

2. ROLL CALL

Present: Mayor Anderson, Vice Mayor Tatzin, Councilmembers Andersson, Anduri and Federighi

Absent: None

Staff: Steven Falk, City Manager; Ann Merideth, Community Development Director; Niroop Srivatsa, Planning and Building Services Manager, Mala Subramanian, City Attorney; Tony Coe, Engineering Services Manager; Leah Greenblat, Transportation Planner; Matt Luttropp, Associate Engineer; Christine Sinnette, Senior Planner; Joanne Robbins, City Clerk

3. PLEDGE OF ALLEGIANCE – led by Mayor Anderson.

4. ADOPTION OF AGENDA

Vice Mayor Tatzin suggested moving the report of Closed Session as the last item on the agenda, suggested holding public comment for those who could not stay for the jazz performance and to re-open the public comment section just prior to hearing Item 7C.

Councilmember Anduri also requested removal of Item 12B and for it to be rescheduled to the April 28, 2008 agenda.

ACTION: It was M/S/C (Tatzin/Andersson) to adopt the agenda, as amended. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Andersson, Anduri, Federighi; Noes: None; Absent: None).

5. PUBLIC COMMENTS

MARY ANN HOISINGTON, Contra Costa Library Commission and Friends of the Lafayette Library, reminded everyone this is Public Library Week, thanked the Council for their constant enthusiastic support and thanked City Manager Falk for his letter supporting libraries which was published on Saturday in the Contra Costa Times.

GORDON MAXWELL SPAHR, Troop 200, said he is currently working on his Eagle Scout project that a component is raising awareness about dumping which is a major environmental problem and one of the ways their project has emerged is by putting

plaques on drains. He said all public drains in the City have been done and he asked for the City's help in putting the plaques on private drains, stating residents can go to the City's website and click on the Public Works Department, Works Request, and fill out a request form or call the department phone number to have the plaques installed over the drains.

Vice Mayor Tatzin thanked Mr. Spahr for his efforts in getting all of the public drain plaques installed in the downtown.

7. PRESENTATIONS

A. The Acalanes High School Jazz Combo, winners of the Monterey Jazz Festival NeXT Generation youth jazz combo competition, coached by Mary Fettig

Recommendation: Receive and file.

Mayor Anderson introduced the Acalanes High School Jazz Combo, congratulated them winning the Monterey Jazz Festival NeXT Generation Youth Jazz Combo Competition, and introduced each of the musicians, who proceeded to perform.

Julia Athayde in the absence of her husband, spoke about what is involved in the combo's win, stating over 70 combos competed and were chosen to perform; that out of those, 6 combos were chosen to compete in the finals, and Acalanes took first place over all of them. She said they will be playing on stage in September at the Monterey Jazz Festival and congratulated them.

Mary Fettig was presented with a bouquet by Ellie Athayde who said Mary was the person who pushed them and got them going to compete, encouraged them to go to the Reno Jazz Festival where they won second place as well as Folsom Jazz Festival. Mayor Anderson presented proclamations to Parker Grant, Ben Ebert, Maxime Stinnett, Gurbir Dhillon, Ellie Athayde and coach, Mary Fettig.

B. Presentation to the winners of the City of Lafayette Green Awards for Environmental Excellence

Recommendation: Receive and file.

Mayor Anderson recognized and presented awards to the winners of the City of Lafayette green awards for environmental excellence and spoke about each of the winner's green efforts:

Name	Category
Joanne Tan	Resident
Jeff Kent	Resident
Christina & Brendan Morley and Swatt Architects	Green Building Project
Our Savior's Lutheran Church and its Holy Planet Task Force	Community Organization
St. Anselm's Episcopal Church	Community Organization
Lafayette Park Hotel & Spa	Local Business
Tina Curiel	Schools
Tala Aghabeigi	Schools
Monetto Meo	Schools
Kim Curiel	Schools

Cake Break
The City Council took a break at 8:00 p.m. and reconvened the regular meeting at 8:11 p.m.

5. PUBLIC COMMENTS (Continued)

ANN BURNS thanked Ron Lefler for working to have their street's major potholes filled a couple of weeks ago. She greatly appreciates this and while it is a long way to getting the road completely fixed, the major holes were repaired and were no longer a safety hazard. She also implored the Council to do something about reviewing the policy for the roads.

Vice Mayor Tatzin requested Ms. Burns return in the winter to let the Council know how the potholes were holding up.

Convene joint session with Circulation Commission

ACTION: It was M/S/C (Tatzin/Andersson) to convene the joint session with the Circulation Commission. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Andersson, Anduri, Federighi; Noes: None; Absent: None).

C. Martin Engelmann, Contra Costa Transportation Authority Deputy Director and Leah Greenblat, Transportation Planner
Draft Lamorinda Action Plan
Recommendation: Receive and provide comments.

Transportation Planner Leah Greenblat introduced Martin Englemann, Deputy Director of the Contra Costa Transportation Authority and Bill Loudin of DKS, stating the Lamorinda Planning and Program Management Committee (LPMC) has been working on drafting the Plan, said they are a subset of the Southwest Area Transportation Committee (SWAT), they are looking at what the CCTA calls the Routes of Regional Significance, and in Lafayette, they have Pleasant Hill Road, Highway 24 and in Orinda, Camino Pablo/San Pablo Dam Road.

She said Vice Mayor Tatzin sits on the CCTA committees and herself, Mr. Coe, Vice Mayor Tatzin and Ms. Srivatsa all have looked at various drafts of the plan and tried to help shape it. A lot of the parts of the plan seen tonight are in response to traffic modeling that the plan has been focused on. It shows that in the future routes of regional significance will become more congested with traffic and it will have impacts on the parallel routes and on local streets. One of the key elements is a gateway policy to maintain capacity for Lamorinda residents on the routes of regional significance. These changes in the Action Plan are in response to try and maintain some access and prevent the spillover onto local streets, as well as to maintain access on BART trains for Lamorinda patrons.

She said in the agenda packet, there is a copy of the draft Plan as well as a preliminary list of staff comments and many are focused on pedestrian and bicycle safety along Pleasant Hill Road. Additionally, staff would suggest that some additional traffic volume counts on Pleasant Hill Road be done to establish some baselines for these gateway objectives discussed in the plan.

Martin Englemann, Deputy Executive Director of CCTA, presented the Lamorinda Action Plan, said they started last summer and has worked intensively with the Technical Advisory Committees, staff and cities to respond to requirements of Measure C and also to the upcoming Measure J. When Measure C was passed 20 years ago it included a paragraph which states that jurisdictions that comply are entitled to receive the 18% improvement funds from the sales tax. Measure C has strict LOS standards and much more flexible standards for regional routes, which are left up to SWAT and LPMC, but it states that they shall review and determine traffic originating outside of the county, environmental and financial considerations, jointly determine appropriations of regional traffic patterns, and traffic plans were then prepared.

Measure J goes into effect one year from now and action planning concepts were put into the measure, which he read into the record. He said this is part of the requirement that you participate in the multi-jurisdictional process, the identification of routes of regional significance took place 10 years ago, and 1995 covered State Route 24 and later in 1998, Pleasant Hill Road and Camino Pablo was developed. St. Mary's, Mt Diablo, Moraga and Rheem are not considered routes of regional significance and are not addressed in the action plan. What that means is that projects for those routes, therefore, the standards fall within the jurisdictions in which they lie.

He and Bill Loudin have a draft action plan to be presented tonight and they will go through the schedule for review and take questions. Bill Loudin is the Principal at DKS and project manager for the action plan development.

Bill Loudin of DKS presented the PowerPoint presentation, reviewed the agenda of the objectives and schedule, background and proposed changes. He presented the tentative schedule with an approved final action plan for October 2008. Components of the action plan include statements of vision, goals and policies, routes of regional significance, multi-modal transportation service objectives, implementation actions, regional development review and mitigation fee program. The Lamorinda routes of regional significance include SR 24, Pleasant Hill Road and Camino Pablo/San Pablo Dam Road. Statements of vision, goals and policies include environmental quality, community character and use of alternative modes; formalizing the policy of gateway capacity constraints to preserve local mobility; improving safety for all travel modes; and cooperative planning. He presented existing measure of service objective standards and whether or not they were achieved in 2007 for SR 24, Pleasant Hill Road and Camino Pablo/San Pablo Dam Road. MTSO Updates include on-ramps, and the delay index calculation on SR 24. The delay index is 1.5 or less for all but the six most congested hours of the day on SR 24; and a loading factor (ratio of passengers to seats) on BART of 1.5 or less for each hour of the day was added along with a MTSO for a maximum wait time for drivers on side streets wishing to access Pleasant Hill Road or Taylor Boulevard within one signal cycle or less.

He presented forecasts of MTSO Values for 2030 by measure, standard and whether or not they were achieved for 2030 for each of the SR 24, Pleasant Hill Road and Camino Pablo/San Pablo Dam Road. Proposed actions as a result for SR 24 include: implement an incident management program; expand transit service through Caldecott Tunnel, support Caldecott Tunnel Fourth Bore, and expand park-n-ride opportunities. Pleasant Hill Road proposed actions include: establish and maintain County Connection bus service on Pleasant Hill Road; maintain school bus service on Pleasant Hill Road and

Taylor Boulevard; investigate appropriate mechanism to discourage use of Pleasant Hill Road as a substitute for freeway travel; and expand park-n-ride opportunities north of Lafayette.

For Camino Pablo/San Pablo Dam Road, proposed actions include: support actions to increase transit use, encourage alternative travel modes through pedestrian and bicycle improvements and to encourage safe travel on corridor.

Proposed programmatic actions: 1) Support transit, HOV and demand management programs to reduce vehicle trips; 2) support the development of a seamless HOV network on I-80 and I-680; 3) support school start times that reduce peak commute loads; 4) support multi-modal safety actions that encourage safe speeds with particular emphasis on access to schools; and 5) evaluate traffic management options to implement Gateway Capacity Constraints Policy.

Mr. Englemann described plan implementation through monitoring and review: Circulation of development EIR's, General plan amendments, and review of action plans. He presented the tentative schedule as follows:

Circulate Draft Action Plan	March-April 08
Analyze complete set of action plans	April 08
Review comments on craft action plan	May 08
Prepare revised draft action plan	May 08
Approve "Proposal for adoption" of action plan and forward to CCTA	July 08
Prepare Final action plan update	September 08
Approve final action plan update	October 08

Mayor Anderson confirmed with members of the Circulation Commission that they had received a copy of the Circulation Draft of the Action Plan.

Commissioner Wood referred to the circulation of Development EIR's and reporting increases in trips, and she asked what consequences would there be for the jurisdictions that report 50 or 100 more trips. Vice Mayor Tatzin said the process involves notification and other jurisdictions may comment, but there is nothing in any Measure C or Measure J language that gives any jurisdiction control over the land use decisions made by different jurisdictions. He said cities can try and negotiate for reduced project size or mitigation measures or take a jurisdiction to court, but ultimately, the jurisdiction in which the development lies makes the land use decision. He said conceptually, there is a procedure within Measure C where jurisdictions are supposed to enter into mutual discussions and joint planning and if this is not done, the jurisdiction may risk losing their return-to-source funding, but this never happened in the history of Measure C.

Commissioner Wood said if a huge development is built upstream on Pleasant Hill Road that has an impact on Lafayette's ability to reach its goals, she believed the City would suffer. Vice Mayor Tatzin said this is where the gateway constraints policy comes into play. He said Walnut Creek has done this and has installed metering lights that affect traffic coming in from parts of East County, which maintains traffic flow and makes it easier for people in Walnut Creek to get out onto streets. Gateway constraints could be required on Camino Pablo and Pleasant Hill Road and to some extent already exist on

SR 24. He believed that mutual cooperation is better than nothing but it is not a cure-all, and he believed the City can only hope for mutual cooperation.

He said there was an early goal of reducing congestion, but early on they realized that we want to make congestion less bad than it would be otherwise. It is true that more people generally cause more trips, and Commissioner Wood agreed and said if the fourth bore is built, more people will come.

Commissioner Hiden noted that the 18% return-to-source money was conceived by the City's Engineer, Chuck DeLeuw. Regarding the housing numbers she asked Mr. Loudin and Mr. Englemann whether or not they used the housing numbers devised by ABAG in November 2007 which were radically different. Mr. Englemann said the development of the land use forecast actually takes a lot of time and by the time they are done developing the plan and ABAG comes up with new numbers. He acknowledged they were a bit behind and they are using Projections 2005. However, the nice thing is that they have been subject to local review by all local jurisdictions, they have been fine-tuned and agreed upon by local jurisdictions and they have kept it within the 1% tolerance, which is based on Projections 2005. He also said they plan to skip one year in order to catch up.

Commissioner Hiden asked that information come to the Circulation Commission, referred to page 20 and questioned what 229% on the graph represented. Mr. Loudin said this is the modeling for 2030 and the 229% is the percentage increase in transit ridership they saw in their modeling on the single route serving the Camino Pablo/San Pablo Dam Road corridor.

Commissioner Hiden referred to page 32 it refers to the General Plan Amendments. Moraga and Lafayette are both doing downtown specific plans which will involve revisions in both cities. She questioned if this meant that if rezoning is done, each downtown specific plan will have to go through the review process for Lamorinda, SWAT and the rest of the CCTA. Vice Mayor Tatzin said if the plan meets the threshold level of changes in number of trips, then the other jurisdictions would be noticed. If no one comments on it, there is no real process.

Commissioner Poling questioned whether the gateway constraint idea was being extended to all the Action Plans, and Mr. Englemann said at present the only area that has a formal Gateway Constraints policy is in the Tri-Valley where they saw in 2030 that the forecast was overwhelming in terms of traffic coming in from San Joaquin, so they set some physical constraints on width. He said the other policy in place in Central County is really not so much a constraints policy but signals to meter traffic. On Pleasant Hill Road, there is a two-lane width southbound. This can be adopted as a gateway constraint or a traffic management program with metering, but the idea is to get these ideas going in your Action Plan with more analysis to formalize them. But the decision is whether you will want to move forward with those gateways, however, he said it is not mandated at all.

Councilmember Andersson said if gateway constraints were only in place in the Tri-Valley, if they are successful in squeezing traffic on other routes and other areas adopt something similar, he questioned whether traffic was simply being squeezed back and forth and slowing everything down.

Mr. Englemann said the idea is actually to manage the traffic. He said they are not trying to squeeze people out. The traffic management program on Ignacio Valley Road encourages traffic to use I-680, Highway 4 and I-580. They are squeezed there rather than on the arterial streets. To help them along on the freeway, they are also looking at freeway performance initiatives which would help freeways operate better, including ramp metering.

Mr. Loudin said there are also other choices such as diversion to transit, shift in time which could result in peak spreading, changes in where people go, and ultimately, land use changes, and they are working with forecasts based on a set of assumptions and the gateway policies could result in many other changes.

Councilmember Andersson questioned how the BART goal of 1.5 on the loading factor worked and asked if BART runs trains at the minimum headway or could they put more trains through. Mr. Loudin said there are constraints in the BART system in their switching points and not so much on the line. There is a Y that feeds into the tube under the Bay and this is a significant congestion point. This puts capacity restrictions on the line through to San Francisco, but has nothing to do with trains to Oakland or to Fremont. So there are possibilities where someday the Y could be solved through better design.

Ms. Greenblat added that one of the impetuses for adding the loading capacity for BART was e-BART; there will be an extension upstream and people would be transferring onto BART and coming through Lamorinda, and Lafayette wants to plan for that.

Councilmember Federighi said one of the new actions added with the 2008 plan update was to support operational improvements that increase through-put on I-80 to reduce diversion of traffic to Lamorinda. She believed I-80 is worse than SR 24 and she questioned what improvements could the City anticipate.

Bill Loudin said there is a major multi-million dollar effort underway with special funding to do intelligent transportation systems to reduce traffic conflict and get more through-put in the most heavy congested peak periods, and it hopefully will increase the through-put even though the capacity remains significant. Often during the peak period the throughput will increase to a point until there is breakdown and then it drops off drastically. Measures like ramp metering are designed not just to hold people back, but to smooth the flow so there is a breakdown and so that people are staying out at that maximum through-put point.

Vice Mayor Tatzin suggested that the Circulation Commission hear the item and report back at the next Council meeting, and Councilmember Federighi requested their comments be made in writing.

Adjourn joint session

ACTION: It was M/S/C (Tatzin/Andersson) to adjourn the joint session. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Andersson, Anduri, Federighi; Noes: None; Absent: None).

8. OLD BUSINESS

A. Matt Luttropp, Associate Engineer

1. **Presentation of Conceptual Plans for Mt. Diablo Boulevard Pathway from the Lafayette Reservoir to Village Center**
   Recommendation: Staff to provide verbal update.

Associate Engineer Matt Luttropp said a joint meeting was held prior to the Council meeting where they discussed coming up with a consensus for what the pathway configuration would be. They arrived at the following consensus: The pathway would be 10 feet wide, will have a straight alignment, the bike lane adjacent to the pathway will be 5 feet wide, there will be some informal landscaping on the back side of the pathway between the edge of the pathway and the creek to supplement the existing materials there, and the surfacing for the pathway will be a porous concrete stained a natural color. He said he will be writing a staff report summarizing all of the information in detail and it will be brought back to the Council at the next meeting as a Consent item.

Councilmember Anduri questioned and confirmed with Mr. Luttropp that the bike lane from the 10 foot walkway would be separated with a concrete curb.

Councilmember Andersson noted that the determination consensus to go with the permeable surface is a more expensive one than the standard one, and depending upon the response from EBMUD as to whether they are willing to pay for this, this question may be revisited which may change the other assumptions and might be revisited.

Councilmember Anduri said they heard a lot from the Creeks Committee about the health of the creek and he questioned if they were satisfied with the material. Councilmember Andersson said they are, but if it cannot be used, the other question is how to you get an impervious system to shed water without eroding the creek. One possibility is to put landscaping between the walkway and bicycle lane, narrowing the walkway which has other implications, but they have identified one way to approach this and hopefully it will work out. Otherwise, some of the other assumptions will be affected and change.

2. **Unpermitted Removal of Public Sidewalk on Merriewood Drive**
   Recommendation: Direct staff to proceed with the re-noticing of the property owners and if they fail to respond restore the sidewalk, proceed with abatement and hold a public hearing to determine cost and seek reimbursement from the property owners. If the owners fail to reimburse the City within a timely manner, commence the process to attach the cost to the property tax roll for the subject property.

Associate Engineer Matt Luttropp said staff presented this item on November 13, 2008 and staff prepared a deferred improvement agreement for the property owner's signatures. Despite several rewritings with the property owners and City Attorney and staff, they were unable to develop an agreement acceptable to all parties. Therefore, staff seeks Council direction on whether to proceed with the summary abatement action to restore the unpermitted removal of City facilities. In addition, since the writing of the staff report, staff received correspondence from the property owners where they were concerned that the City never formally demonstrated that the sidewalk was on the City's right-of-way. He presented copies of the subdivision maps that confirm that the property is the City's public right-of-way.

Vice Mayor Tatzin said if the City and the Allen's could enter into an agreement at some point, and the City at some point decided to bid the work and install the sidewalk and then bill the Allen's an appropriate amount, and for whatever reason they did not pay, he confirmed with the City Attorney that the City could then take other action to collect.

He asked if there is any reason why the City would take any action other than just signing the agreement and sending the Allen's an appropriate invoice and expecting them to pay. He said there seems to be concern by the Allen's that the City could do something illegally even if they were compliant. So, he questioned if it were possible to enter into a statement to say that the City would not take any action as long as the Allen's remain in compliance with the agreement? City Attorney Mala Subramanian said this could be done if they comply with the agreement, assuming the City moves forward with the signing. However, she said she would not recommend a release of any liability.

DESMOND ALLEN believed the Council should vote in favor of staff's option 1 or 2. He said despite their good faith efforts to comply with the direction of the Council on November 13, 2007 meeting, the Engineering Department failed to prepare a deferred improvement agreement which accurately reflected the Council's directive. Moreover, the Engineering Department now seeks to take action in option 3 contrary to that directive, and option 3 should be rejected. On 11/13/07, the Council indicated it was not a critical sidewalk for pedestrian flow and expressed concern about the protected maple tree. On January 8, staff forwarded an 8-page document entitled, Deferred Improvement Agreement asking them to return a signed and notarized copy. As directed by the Council they relocated the tree in good faith by February 1, 2008, but found the agreement to be inaccurate, onerous and one-sided. There was no indication that this was a standard agreement and did not reflect what was decided at the Council meeting. On January 23, they wrote a letter of concern with copy to the Council. They closed the letter by stating they would remain willing to pay for the portion of concrete to replace the sidewalk removed if and when the City solved the connecting sidewalk. They are also willing to sign a fair agreement, said on February 4, 2008, the Engineering Department responded by letter requesting they revise the agreement with terms acceptable to them by February 27th. The minutes of the November 13 Council meeting indicated a March 2008 deadline for them to sign the agreement. Accordingly, they hand-delivered a signed notarized agreement on February 27th to staff. They expected the matter to be set for a hearing in March 2008 as indicated by the Council's request, but instead the Engineering Department sent a further revised agreement on March 12, 2008. Among other things, the version limited the future Merriewood sidewalk to our property and the neighbors at 563 Merriewood Drive. Prior to sending us the March 12 version of the agreement, staff telephoned his wife at work and he insisted she discuss the agreement. She accommodated him and explained she did not have the agreement or any correspondence in front of her, and she generally stated that it was not necessary to agree to a lien on the property since the deferred improvement agreement was a covenant running with the land recorded against their property. The trigger for their compliance under the agreement was installation of a sidewalk on Merriewood Drive and not merely a usable segment of sidewalk. The Council specified no such limitation or qualification. He presented photos showing a more logical connection to the existing Merriewood sidewalk leading to the main entrance to the elementary school. The 11/13 Council vote made clear that option 4 was in lieu of small claims court. Contrary to this objective, in Section 2.3 of the 3/12 version of the agreement, the City reserves the right to all legal remedies even though inconsistent with the agreement. On March 13, they wrote staff documenting their concerns, expressed concern with the repeated intrusive

contact at work by staff and multiple versions of the staff report were sent via email. They also received a mailing at their home this week with the version citing a new statute and request to replace the portion of sidewalk or further lien will be placed on their property. He urged the Council to reject option 3. Even if the new ordinance were to be applied to their situation, he said California Highways Code requires maintenance of a sidewalk "in such condition that the sidewalk would not invade your persons or property" and he believed that removal of the buckling sections complies with this statute. The statute further states it will not be used for construction of new improvements. He said City ordinances and regulations prevail over all state laws other than those that specifically address matters of statewide concern. In addition, the City of Lafayette has not adopted the state law permitting liens. They urge the Council to reject option 3, the Council should consider this a selective enforcement issue and as a precedent of prosecuting City residents, most of whom are law abiding citizens and taxpayers. He urged the Council to adopt option 1 or as an alternative, option 2. He feels they have made a good effort to comply with the directive given by the Council and remain willing to sign an agreement consistent with that directive.

Councilmember Andersson said Mr. Allen indicates that the City is selectively enforcing the condition, and he asked if there was another situation where someone has removed City improvements from City property.

KATHERINE ALLEN said they submitted photos showing throughout their subdivision numerous instances where there is no sidewalk. She said she was not sure if an existing sidewalk had been removed or not, but her point is that homeowners are not being required to install or maintain the sidewalk in the area. She said there were also very few sidewalks in their subdivision. Councilmember Andersson said there was a sidewalk which was taken out and he wondered how is this selectively being enforced if this is the only situation like that. Mrs. Allen said the Engineering Department is not aware of any lien procedures and this suggests they have never enforced the ordinance against any homeowner.

Vice Mayor Tatzin asked to understand what disagreements the Allen's have with the revised agreement based upon the telephone negotiations with her. Mrs. Allen said there are two issues: 1) the provision that the City reserves all rights to pursue all legal remedies even those inconsistent with the agreement; and 2) she wanted the agreement to reference that this is lieu of small claims court action.

Vice Mayor Tatzin said if there was to have an agreement and the Allen's comply, then the City would not take any other action outside of the agreement unless they did not comply. He confirmed with Mrs. Allen she was comfortable if this were better clarified in the agreement.

Councilmember Federighi said in Mrs. Allen's own version under default notice and remedies, it seems that the only remedy she has is that if the City declares the owner to be in default, then the owner shall remedy the default within 30 days of notice and nothing more. She questioned what would happen if the owner continues to default. Mrs. Allen said then the City could take them to small claims court for not complying with the agreement and she believed nothing precludes enforcing the agreement.

Councilmember Federighi said if the City incurs attorney's fees, staff time, she questioned would this not be legitimate in order to enforce and collect on the agreement.

Mrs. Allen said their version of the agreement provides for attorney's fees and it gets them consensus to comply under paragraph 17 of the February 27th agreement.

Councilmember Federighi said the idea of entering into an agreement was a compromise to requiring that the Allen's to replace the sidewalk that was ripped out in the first place; that the City would not enforce it right now, but that the Allen's agreed to a deferral and as such time there was additional connection, the City could require the Allen's to put in that improvement. So, she believed this was a concession on the City's part.

Mrs. Allen said they understand that, but they are making concessions as well based on all arguments made. They feel they have complied with the statute and made the area safe. They had an issue with the tree ordinance as well and they tried piecing together all City requirements and they made a good faith effort to comply considering the tree and the sidewalk were not safe.

Councilmember Anduri confirmed with Mr. Luttropp that the City Attorney was involved in drafting the agreement, that the City sent a draft of the agreement on January 8, there was negotiations with the Allen's, then the City sent a letter on February 4 asking for a draft from the Allen's and time to review the agreement with a February 27 deadline, and that staff received the signed and notarized agreement on February 27 with no time to review.

Mayor Anderson said he feels the City has made an effort to be accommodating but it is not being recognized as such. City Attorney Subramanian said she thinks if there is no compliance in terms of moving forward with Exhibit D and there is not a payment received within a 30-day period, the City must preserve its ability to lien the property or move forward in small claims court, and also the liability on the property owner still has to exist.

Vice Mayor Tatzin referred to Exhibit D and said the City has moved very close to agreement; that Exhibit D states the City will do the work at a time when necessary and that the Allen's will pay a proportionate share, and the Allen's have agreed that if they didn't perform under the agreement, then the City should be able to take appropriate action, and that what the City might want to do is modify Exhibit D that we would not take any action unless they were not in compliance, which could be clarified. He suggested asking the City Attorney to make that modification, not change the issue of liability and get the agreement signed. City Attorney Subramanian questioned if the property owners would deem this acceptable in order to avoid documents going back and forth.

Councilmember Anduri said he believes the City has made every effort on the matter, he is not happy with the owners' response and he suggested not spending too much time waiting for it to get done. He believed the request to modify Exhibit D as stated was acceptable. Councilmember Federighi believes it is very clear already, but she was amenable to the change.

Councilmember Andersson said the issue is not whether other people have sidewalks, but whether the City allows someone to unilaterally pull City improvements off of City property and then start to negotiate what comes next. He remembers a situation on Second Street where someone completely reconfigured the cul-de-sac and the owner had to remove it and put it back the way it was. So, there is precedent for this sort of

thing. He does not want to see the sidewalk put back right now, but he is very concerned about a precedence that says the sidewalk can be removed and we can talk later about putting it back in. He also was concerned about spending a lot of staff time with negotiating the situation, which he feels is unnecessary. He was supportive of making the modification to Exhibit D and if this does not work then staff should move straight to option 3.

Councilmember Anduri suggested that an appointment be scheduled with the City Attorney, staff and the Allen's within one week, and if no agreement is reached, then it should return to the Council on April 28th for Option 3.

Mrs. Allen said the agreement still provides for the lien provision, and City Attorney Subramanian said she would recommend the lien procedure be left in, and Mrs. Allen agreed. She also requested clarification for use of the sidewalk. Vice Mayor Tatzin agreed that this could be left to the City Manager or City Engineer's determination, and he believed the Allen's were covered because it states, "The construction of the improvement shall be deferred until such time as the City Manager determines there is no reason to defer construction of improvements because of construction is necessary for public health, welfare and safety or necessary for the orderly development of the surrounding area." He did not believe the City would do it on a whim. He said Item 2.2 states "if the work requires the remedy …."diligently prosecuted" should be changed to "diligently paid." He said that we are trying to indicate that if the City sends an invoice and you do not pay, then the City can place a lien on the property, but only in that case. Mrs. Allen said she believes this would better clarify it.

ACTION: It was M/S/C (Anduri/Federighi) for staff to schedule an appointment with the Allen's within one week and if no agreement is reached, the item should return to the City Council on April 28, 2008 with recommendation for Option 3. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Andersson, Anduri Federighi; Noes: None; Absent: None).

Vice Mayor Tatzin suggested Items 9A and 10B be heard first and thereafter, hear Item 8B.

ACTION: It was M/S/C (Tatzin/Andersson) to hear Items 9A and 10B prior to hearing Item 8B. Vote: 5-0-0 (Ayes: Anderson Tatzin, Andersson, Anduri, Federighi; Noes: None; Absent: None).

9. STAFF REPORTS

A. Mike Moran, Associate Engineer

Award of Contract for Estates Drive and Canyon Road pavement Rehabilitation and Storm Drain Improvements Project, project Number 014-9668

Recommendation: 1) Adopt the project plans, specifications, and project details to conform to the Uniform Construction Accounting Act. 2) Award contract for the Estate Drive and Canyon Road Pavement Rehabilitation and Storm Drain Improvement Project, Project Number 014-9668, to William G. McCullough Co. in the amount of $981,803.50. 3) Authorize a project budget increase of $260,000, to be funded from Fund 014 fund balance.

City Engineer Coe said this is a project staff is hoping to get done this summer and is asking City Council to take action to award a construction contract for the lowest bid.

The project needs more money due to the fact that staff has added the reconstruction of Sweet Court to the project as an additional work scope. He said when the City resurfaced Sweet Drive last year, some residents in the area offered to pay half in order to expedite the reconstruction of their street in conjunction with that project. Staff was not able to make this happen for Sweet Court in time, but have included the design in the bid package for the Estates Canyon Drive project and informed residents on the court of the true costs based on the lowest bid and they have indicated that they are willing to pay half of the cost.

He said the other addition to the project involves storm drain and safety improvements that came out of the public review process which were additional work items not contemplated in the original cost estimates and budgeting for the project. Staff would require a budget increase of $260,000 for the project, and he noted that at the last meeting the Council accepted two contracts for final acceptance from the 2007 pavement management program with a surplus of unspent contingency funds of around $260,000 and staff is requesting the Council carry forward that project surplus into this project.

Vice Mayor Tatzin asked Mr. Coe to take the new paving cost estimates and build them into the City's backlog, and Mr. Coe said this has been done. He said CPAC would meet the following evening to discuss the pavement management program for 2009 and beyond. He noted that in Orinda, they opened their paving project for Moraga Way. They were paying in the mid to high $80 per ton average in January for asphalt. For this project, the City is paying an average of over $100 per ton.

Residents from Sweet Court in the audience confirmed they have all agreed to pay for a portion of the funds necessary for the work on that street.

ACTION: It was M/S/C (Tatzin/Federighi) 1) Adopted the project plans, specifications, and project details to conform to the Uniform Construction Accounting Act; 2) Awarded contract for the Estate Drive and Canyon Road Pavement Rehabilitation and Storm Drain Improvement Project, Project Number 014-9668, to William G. McCullough Co. in the amount of $981,803.50; and 3) Authorized a project budget increase of $260,000, to be funded from Fund 014 fund balance. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Andersson, Anduri, Federighi; Noes: None; Absent: None).

10. PUBLIC HEARINGS

A. Christine Sinnette, Senior Planner
Resolution 2008-15 (previously Ordinance 571) ratifying Ordinance No. 2007-47 of the Contra Costa County Fire Protection District adopting amendment to the California Fire Code
Recommendation: Conduct public hearing and adopt Resolution 2008-15 ratifying District Ordinance No. 2007-047.

Senior Planner Christine Sinnette said the Resolution would ratify the ordinance of the Contra Costa County Fire Protection District., It was first introduced in January and since that time, staff has studied the ordinance to fully understand what was being amended in the California Fire Code and why. She said unless the City adopts the Fire Code appendices directly or ratifies Ordinance 2007-47, the City will be directly responsible for administering the Fire Code, including weed abatement, commercial inspections and development plan review. She said there are parts of the ordinance that may warrant

closer review, but staff recommends that it be ratified as is so the Fire District can continue to provide fire protection services to the City. Staff will continue to review the District ordinance and may suggest future modifications as needed. She noted Fire Marshal Richard Carpenter was present to answer questions.

Fire Marshal Carpenter thanked the Planning Department staff who have been very supportive, they spent a lot of time discussing the matter, however, this is not an ordinance that if not passed would stop fire protection services but it is a fire prevention ordinance that relates to on-going planning, weed abatement, water supply access and those types of issues.

Vice Mayor Tatzin said there are provisions in the Code that when there is construction, there must be certain access to sites, which in some cases is a more visible access in terms of cut and fill than what we might require for the finished product. There is potential conflict between this and the Planning Department, and he understood that there is the capability to work with the Fire District on a case by case basis to figure out what makes sense. Fire Marshal Carpenter said the City and the District have always worked hand in hand to resolve issues. It is a matter of whether they can access projects during inclement weather and not so much an access problem but when they get to the point where weather is a problem getting in or the actual terrain is a problem, they work closely with the City to resolve those issues ahead of time. Most important is not for the property owner to have to spend a lot of money to improve something that will be removed later. He said there have also been driveway width issues, but they have generally experienced no problems.

Mayor Anderson thanked Fire Marshal Carpenter for working with the City staff. He opened the public hearing. There were no public speakers and he closed the public hearing.

ACTION: It was M/S/C (Tatzin/Andersson) to adopt Resolution 2008-15 ratifying District Ordinance No. 2007-047. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Andersson, Anduri, Federighi; Noes: None; Absent: None)

B. Niroop Srivatsa, Planning & Building Services Manager
Consideration Of The Fourth Amendment To The Town Center Development Agreement which (1) Extends the term of the Development Agreement for no more than two additional years, (2) Allows either: (i) an office use as originally contemplated in the Development Agreement or (ii) a residential use for Phase III of the Town Center development, (3) Describes the attributes of the residential project alternative, and (4) Establishes specific fees which may be charged in the event that a residential project alternative is pursued. Property is located north of Mount Diablo Blvd., between South Thompson Road and the Dewing Avenue extension. APNs 243-040-034 to 037.
Recommendation: Introduce Ordinance 574 and continue to the meeting of April 28th for second reading and adoption.

Planning and Building Services Manager Srivatsa said what is before the Council is an ordinance which would approve a fourth amendment to the Town Center development agreement approved back in the mid-90's, it would extend the DA for two additional years, would allow a residential use in addition to the office use already approved, it

describes the attributes of a residential development on the property with reference to the Heller-Manus plans and it establishes specific fees that a residential development would pay.

Staff took the draft agreement to the Planning Commission and they recommended approval by a vote of 6-1. There were two comments or items focused on; one was the definition of height and reference to sea level. Commissioner Human who is a surveyor felt that the language could cause confusion when an application was submitted. The other comment was actually referring to a section of the Settlement Agreement which allocates specific time periods within which the Design Review Commission, Planning Commission and City Council must review and act on the application. They felt this was unusual and aggressive and was not consistent with what the City normally does. Staff is recommending approval to introduce the ordinance and continue it to the 28th for a second reading.

Vice Mayor Tatzin confirmed with Mayor Anderson that the subcommittee has reviewed it and recommended approval. Ms. Srivatsa said what is in the fourth amendment is a reflection of what was in the Settlement Agreement which the subcommittee negotiated. Councilmember Federighi questioned and confirmed that the timeframes were workable, and Ms. Srivatsa said staff recognized they were unusual and not something the City normally does, but they factored in at least two to three meetings in every 45 day period.

Mayor Anderson questioned the issue of sea level as a datum and he asked where this showed up. Ms. Srivatsa said it shows up in the development agreement in Section 4. It states, “Amendment of Section 3.03 of the agreement” and at the bottom of the paragraph it states “for purposes of this paragraph, the height limitation imposed by the existing face of a project shall be determined by project height above sea level rather than existing grade”. This establishes the maximum height of Phase III if one drew a horizontal line across.

Councilmember Federighi questioned if this was essentially what the original Heller-Manus project proposed and in no way appear higher than Town Center II. Ms. Srivatsa said staff is trying to find the source of this definition, but it really comes from the settlement agreement. So she can understand where it is coming from and can work with it because the concept behind it is to establish a maximum height in Phase II that will be used as a gauge to measure the maximum height of Phase III.

Councilmember Federighi said she thought there was language that definitely states that in no way would the height be visually higher than what was in Town Center II, but she could not find it. Councilmember Anduri said all the Council has is the amendment and we see parts of the original agreement, and Ms. Srivatsa said the agreement states that in no case shall the height of the building exceed the existing residential and retail components. This is the sentence that precedes the reference to sea level.

Mayor Anderson opened the public hearing.

DAVID BOWIE representing Lafayette Residential Partners, said Councilmember Federighi’s recollection is correct--the idea was to find a reference point and the perception of height would be no higher than the existing buildings and the first part of the sentence establishes that. The issue and the reason the modification phrase was put in was to clarify it due to the perception. What they did is they said we have some finite

means of measuring it, the easy way to do it would be to say sea level, and it is to be no higher than the other buildings, but we can determine that if there is an issue by simply looking at sea level as an objective measurement. He said Commissioner Human raised this as a potential problem. He tried to find out what the nature was of his concern was, he began to preface his comments by indicating that he was sorry that he brought it up because it is a technical issue. Apparently, sea level is not quite the absolute objective standard that as a layman he assumed it was. There are different datum's used that sea level under one measurement might be different from another and he was concerned we might end up with a different measurement. If you use the same datum for both the existing buildings and for the new building, would that solve the problem, and he agreed it would. So, if they do that as direction to staff, the formula would be objective to identify a problem if one existed.

He said the other issue that bothered some members of the Planning Commission had to do with the process, and the subcommittee arrived at a fair compromise with respect to processing of the project. They submitted a pretty specific and more detailed proposal which was much more stringent in its requirements, and what has come from the process is something that is fair and negotiated that resulted in the settlement agreement and now they are asking that this be incorporated into the development agreement and ordinance.

The concern about this being a precedent is misplaced. The project is subject to a development agreement and settlement agreement, so the issue is something whether or not everyone can accept it and he believes it can be worked out within this process. In summary, he believes the staff report is very complete and he appreciates the efforts of the subcommittee to come to an agreement and this gives them a means to move forward to explore that possibility.

Councilmember Andersson questioned if the base grade for the existing apartment complex versus the empty site were at approximately the same height. Mr. Bowie confirmed it was approximately lower by one story.

Vice Mayor Tatzin said as he recalls in Town Center II, the northern most building is measured in sea level terms versus the southern building, so he questioned which building the definition was written for. Mr. Bowie said it would be the highest one. He said this is still subject to review by the Planning Commission.

Vice Mayor Tatzin said is it the highest one as far as Town Center II is or is it the highest one as far south as Town Center III can be? Mr. Bowie said the idea is that they would do a submittal, it would be reviewed by the Planning Commission and Council, and they would not exceed a certain level; the concept was that it would never be any higher than the highest point of the existing project.

Vice Mayor Tatzin said the goal was to have that help define visibility and if you bring the highest point of Town Center II which is built closest to Highway 24, and you bring that height in Town Center III to right behind the parking lot of the retail, you have a higher building by several feet, so it will have a different visual impact from the south side of Mt. Diablo Boulevard than Town Center II does. So, he wondering what the committee was trying to do. Mayor Anderson said they wanted to max out the elevation on the new building to nothing higher than existed on the site now.

Councilmember Federighi said however, this is the maximum height, and the proposal will have to go through review and if this is a deal stopper, it is a deal stopper.

Councilmember Anduri questioned would Mr. Bowie agree then that you will not argue before the Council that you have a right to build to that height. Mr. Bowie said they understand it cannot exceed does not necessarily mean that the City has agreed that this is the height to which we can build. The entire concept here is that we want to go through the process expeditiously, we understand there is a lot of discretion, we think there is enough time to say yes or no without spending huge amounts of money, so we understand this is no guarantee we get that level of height, but the context was the problem they had when they were considering the KB project, where the consultant the City retained identified that the project was not economically viable.

Councilmember Anduri said he understands what the visual nature means, but he has had experience with applicants coming in who say they are entitled to build to a certain height. Mr. Dishnika said the Council has the discretion but they do not want to spend a tremendous amount lot of time and money to go through many exercises. There are many ways of moving the box around, there are so many dynamics and at the end of the day, they will come up with the best solution for all parties.

Vice Mayor Tatzin referred to the southern elevation of the Heller-Manus plan and questioned what the height of the building was compared with the maximum allowable height under this agreement, and Mr. Dishnika did not know. Ms. Srivatsa said it is lower than the height of the building to the rear.

Mayor Anderson felt this was really the basic issue; although the Council set that as the maximum, this is not something the Council is required to accept, but they are allowed to come forward with something that may hit that height. Also, the other part is to have a process short enough that they can get to know quickly whether the answer is yes or no. Mr. Bowie said they also have a fully approved office project, so they are consciously trying to put that on the back burner and come up with a project everyone can agree on.

Ms. Srivatsa said the City also has another level of protection; the development agreement states the application must be consistent with the Heller-Manus plans which show a taller building in the rear and a smaller building in front, so if the City is going to evaluate it against the Heller-Manus plans, it would be inconsistent if the southern building were tall.

PUBLIC COMMENTS:

MARK MITCHELL, Planning Commissioner, said he brought the Heller-Manus plans with him and said the 73.75 feet above the street is the height referenced on the drawings, which is at the back, but they do not specify a tall height can occur in the front. As it is currently proposed, it is 4 stories in the front, the mid roof height along the west side near the front is about 60 feet with a total height of 65 feet, so it is a large structure.

Vice Mayor Tatzin questioned how this compared to the street level on Mt. Diablo. Mr. Mitchell said when he refers to 60 feet he is talking above grade at a location that is higher than street level and a parking lot level right next to it.

Mr. Mitchell also said he sent a letter with objections to the height and the 45-day approval process. The apartments originally submitted and denied were 3 and 4 stories and approximately 48 feet high. The office building approved was 3 stories high and about 39 feet to the mid-roof at the highest location. The Heller-Manus plans call for 4 stories in the front and 5 stories at other locations with 60 feet above grade particularly as it shows on the western side. A 5-story building is a big building and he does not find it to be consistent with Lafayette's semi-rural character. There are about 100 condominium projects coming in and given the choice between an office building which complies with the Bart Block Specific Plan and is more in compliance with the semi-rural nature of the City, his personal preference would be for a residential project, but the Heller-Manus plans do not reflect that and given the choice, he would pick the office building. If you choose residential, he has made recommendations with the following changed language. The first one mentioned is the word "retained" in Section 3. It makes it sound as though we are retaining all elements of the Heller-Manus plan and he would not want the City to look at this in such a narrow focus.

GUY ATWOOD said the Lafayette Homeowners Council member's first choice is housing in the area. They would also like to see something livable from a design and height standpoint, and they would like to protect views in the area. Having said this, they would like to be in a position to work in a proactive way with the applicant versus being in an opposing position. He said he was very disturbed by comments at the Planning Commission hearing which is not the best way to start out on a project, and he suggested working proactively with the developer. One of the problems is the time requirements because it does not give the City or the public an opportunity to work with the applicant if there are problems. If there are problems, they need some way in which they can have the time to work through the problems in a timely manner to move the project forward, and he suggested allowing more flexibility in that. Lastly, the thing that concerns them a lot is the Heller-Manus project; they do not want to be tied to it in that there are more creative ways to deal with the site. They have a problem with the concept of being tied to a specific project, said a 60-65 foot high building cannot be serviced with a fire truck so there are issues that may come up that the Council needs to be aware of and that is what they would encourage the Council to do.

Vice Mayor Tatzin said the City and the community have been looking at the parcel for 13 years, the Heller-Manus design seemed to have approval, KB homes might have been good for all of us but given what has happened to them, it might have been the best thing that has happened. But now to say we have not had any discussion of this strikes him as surprising. There has been so much opportunity for the public to have input and the applicants might not want to submit certain projects but there has been a lot of opportunity for review.

Mr. Atwood said he was not sure how much of the public reviewed the plans, he has never seen the Heller-Manus plans before, but if the project is 60-65 feet tall in the area, there will be many people concerned and what he does not want to have happen is to have a good project and not have the ability for it to get through.

Vice Mayor Tatzin said the flipside is that at some point, you may convince people it is easier to build when it is approved than go through the process of starting all over again and we are at that point in this project. Mr. Atwood asked the Council not to tie its hands or the developer's hands by saying the project is too high, we don't like it, and Vice Mayor Tatzin said they can always agree to amend.

CLIFF TONG said he would admit to not going back 13 years on the project, but it is clear that it has been argued about quite a bit, and at this point he has no preference on housing versus commercial versus mixed use. His last exposure to the project ruffled the hair on his neck from the standpoint in that it appeared to him that it takes on the tenor of a project in which the developer is clearly trying to bias the process to be most advantageous for them. He felt that way when the City was pressured or forced to accept rather than deny the commercial project to begin with and take on faith that we would revisit the residential project through the development agreement which did occur. However, he has concerns about height and timeframes because what happens is that you end up getting a project built out to the maximum density or height, and it gets hard to back off. He referred to similar projects were the City chips away at it over and over, and his fear is that we will set these rules, allow a process that has little time for review, and what will come in is whatever the maximum allowable under the agreement.

Mayor Anderson closed the public hearing.

Councilmember Federighi underscored Vice Mayor Tatzin's comments that this is a property that has been looked at for many years, what gained public acceptance at the time was the Heller-Manus project and it was tall. Some of the Councilmembers had concerns about that height, but looking at everything it seemed like it was still the best thing and the actual impact would not be as negative as some thought. The City went down the road a long time with KB Homes until they pulled out, this is the closest thing the City has had by far to anything that has gained public approval. We had a couple of joint meetings and the hitch is that elements of that plan were economically impossible. So, in trying to take a look at the essence of it the subcommittee would rather see housing, that it was economically infeasible to have a restaurant there because of parking requirements, even some of the live/work units did not work, but what was essential and what had been accepted by a lot of people was the basic concept, elevations, open space, plaza, and the elevations of the Heller-Manus plan.

Mayor Anderson said an office building is approved for the site, the City has an opportunity to explore a residential project but it will be in a constrained fashion. He said it is very reasonable and he accepts the fact that the Council can go through this, make good decisions and say no if not happy and we end up with an office building.

Vice Mayor Tatzin referred to Section 4 of the amendment referencing Section 3.3.03 of the agreement, it talks about "…the developer shall file an application for a Bart Block Specific Plan Amendment…..following a joint meeting of the Council and subsidiary commissions as set forth under the proposed review process for a residential project", and asked if there is a joint meeting contemplated. Ms. Srivatsa said the joint meeting is contemplated and is the initial meeting with the three Commission bodies, and it was not part of the original development, and this would fall under the current City guidelines.

Vice Mayor Tatzin said he wants to make sure the City notices the three speakers tonight, said regardless of the building's size, it will be a prominent building in town. If this were a project that no one has seen before he would be nervous about the dates, but many people have seen it. He feels comfortable that there are enough safeguards with height to proceed and the Council should make sure it has a good turn-out.

ACTION: It was M/S/C (Tatzin/Federighi) to Introduce Ordinance 574 and continue to the meeting of April 28th for second reading and adoption. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Anderesson, Anduri, Federighi; Noes: None; Absent: None).

Vice Mayor Tatzin said Ryan Nicholson was in the audience representing Item 13B; the Lafayette Criterium Bike Race, and he asked that it be taken out of order.

ACTION: It was M/S/C (Tatzin/Federighi) to hear item 13B out of order. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Andersson, Anduri, Federighi; Noes: None; Absent: None).

13. WRITTEN COMMUNICATIONS

B. Letter dated March 21, 2008 from Ryan Nickelson, Race Director for the Lafayette Criterium, requesting permission to hold the fourth annual Lafayette Criterium Bike Race on Sunday, July 13th with road closures as outlined from 5:30 am to 4:30 pm. The event beneficiary will again be the Lafayette Arts and Science Foundation.
Recommendation: Discuss and direct staff.

Ryan Nickelson, Race Director, Contra Costa Cycling Club, said he is pleased to present the fourth Lafayette Criterium to be held on Sunday, July 13, 2008, and they request direction to continue approval of the concept to hold the event, with road closures, and other items. He said one change compared to the last three years is that after last year's event they had a follow-up meeting with Police and Public Works and discussed better ways to have better traffic circulation relating to the road closures. In the past three years, they have had one lane open westbound on Mt. Diablo Boulevard with a pedestrian lane for people to get to and from the bike race, and then a closed section of Mt. Diablo Boulevard for the Bike Race itself. It caused confusion with pedestrians going in-between the traffic lane and the closed section. So, their idea is to have a complete closure of Mt. Diablo Boulevard between First Street and the intersection of Golden Gate Way to the east and redirect and detour traffic to First Street, to Deer hill to Brown Avenue. The feasibility was discussed and all parties agreed this was the best way to provide better pedestrian safety and possibly eliminate confusion. They therefore request this be considered for this year's event.

Councilmember Anduri questioned if there was any discussion about all the people living in the apartments on Second Street. Mr. Nickelson said Second Street has been accessible in the past and that was an area of potential concern.

City Manager Falk said there are dozens of residents on Second Street and staff would recommend that the Council provide staff with latitude to choose last year's option or the proposed option and allow Ms. Robinson and him to discuss this with the Police Chief and Public Works Director.

Mayor Anderson confirmed the request has had some staff review, and Ms. Robinson said last year they held extensive conversations with Public Works and Police but she did not believe residents were considered and she believed more specific work needed to be done with residents.

Mr. Nickelson said it is a constant issue that has arisen particularly with about 20 residents along Golden Gate Way and those cars that park on the street which use the apartments had to be cleared, and no access was allowed during the race. This would

be adding to that, but it is something they have dealt with in the past and have dealt with it effectively by providing early notice.

Vice Mayor Tatzin echoed concerns about the complete closure of Mt. Diablo Boulevard, stating when the Reservoir Run is held, Mt. Diablo is not closed in total, and the road is only closed fro 5-6 hours and not for 9 hours as proposed for the race event. He supported staff's the City Manager's suggestion and also questioned if Mr. Nickelson had been down Golden Gate Way and First Street recently because there is library construction. He questioned if the condition of the course was in good enough shape to hold the race, and Mr. Nickelson said it is in better shape, said there was construction present last year, some paving and trenching was taken care of just prior to the race, and the last time he rode the course was a couple of months ago and the street was fine. We would deal with the same types of mitigations used in the past to provide barricades and safety measures around the trailer. Vice Mayor Tatzin also confirmed with Mr. Nickelson that the race direction was counter-clockwise.

Mayor Anderson said the Council would like more discussion held with staff on how to control the traffic, and the City Manager agreed that the Council's direction was for Mr. Nickelson to work on the race and organizers, that there are serious concerns about closing Second street and they will work with the organizers. Mr. Nickelson said this has no bearing on the race occurring, and they will deal with pedestrian safety issues on Mt. Diablo Boulevard, they have had no incidents, and will address it.

Councilmember Anduri acknowledged and confirmed with Mr. Nickelson that the Council did not believe the event was negative in any way, the City loves the event, but that there are a surprising number of people who live on Second Street.

Councilmember Andersson said this was the fourth consecutive year the race has been held when he is going to be out of the country, but hoped he would be able to attend one in the future.

ACTION: It was M/S/C (Tatzin/Andersson) to grant permission for the fourth annual Lafayette Criterium and direct staff to work with the race director regarding street closures. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Andersson, Anduri, Federighi; Noes: None; Absent: None).

Convene Redevelopment Agency

ACTION: It was M/S/C (Tatzin/Andersson) to convene the Redevelopment Agency. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Andersson, Anduri, Federighi; Noes: None; Absent: None).

B. Steven Falk, City Manager
Funding Agreement between the City of Lafayette and the Lafayette Library and Learning Center Foundation; Loan Agreement between the Lafayette Redevelopment Agency and the Lafayette Library and Learning Center Foundation; and Use Agreement between the City of Lafayette and the Lafayette Library and Learning Center Foundation.
Recommendation: Review the Funding Agreement between the City of Lafayette and the Lafayette Library and Learning Center Foundation; Loan Agreement between the Lafayette Redevelopment Agency and the Lafayette Library and

Learning Center Foundation; and Use Agreement between the City of Lafayette and the Lafayette Library and Learning Center Foundation and continue for approval on April 28, 2008.

Vice Chair Tatzin said as the Council/Agency liaison for the Library and Foundation, he does not vote on the item when it is front of them or tonight before the Council. He said before the Agency is a revision to the loan agreement. It has some amending language which he has drafted this afternoon. As he was trying to do the amortization schedule, he could not make it work the way the agreement was previously written, but could answer questions.

Executive Director Falk said the three documents evolved among four or five different parties. He, Councilmember Tatzin, City Attorney Subramanian have edited the document as well as personnel from the Foundation. Hence, there is no controlling party at this point and have been working cooperatively on it.

Chair Anderson said if the group is still making revisions, then he questioned if it should be heard.

Executive Director Falk said he has seen what has gone in the packet, but there is a new item from Vice Chair Tatzin which he can explain.

Vice Chair Tatzin said there is no proposal to approve the agreements tonight, but simply to ask questions and receive feedback, and since we are moving in on the time there should at least be some discussion.

Chair Anderson questioned if the Council was ready to take up the Loan Agreement as a new agreement or limit the conversation to the unchanged portions, which are the Use Agreement and the Funding Agreement. Agencymember Andersson said he did not object to discussing the revised ones, as feedback could be provided by Vice Chair Tatzin.

Executive Director Falk said the Council has reviewed an earlier draft of each of the three agreements and should be familiar with each of their purposes and content. The purpose for bringing them to the Council tonight is so the Council can see the redline strikeout amendments proposed and provide any feedback. The Foundation is newly formed and they are starting to roll and they are interested in seeing these things become finalized.

<u>Funding Agreement:</u>

Agencymember Anduri referred to Section 3.1, it states, “The City will pay an amount equal to the current expenditures by the City for the operation and maintenance of the existing Library on Moraga Road….” And he asked what the word “current” meant. Vice Chair Tatzin said they will nail it down to a specific budget year.

Chair Anderson referred to Section 3.2; Payment Request, the last sentence states, “..and other library sources that may evolve and are mutually agreed upon between the Parties.” He felt this was extremely vague in terms of monies being available. Vice Chair Tatzin said this was just a catch-all phrase.

Agencymember Andersson referred to Paragraph 1 and questioned why the term was changed from 10 years with an additional 5 year terms to a set 30 year term. Vice Chair Tatzin said questions have been raised by those on the Foundation because the loan agreement runs a certain period before it expires and a funding agreement with a different period, and they suggested it extend to when the Redevelopment Agency can no longer collect revenue.

Agencymember Andersson referred to Section 5.2 is eliminated the Foundation's agreement for indemnification, and City Attorney Subramanian said this was a concession; there was no desire on the Foundation's part to have any indemnification and she agreed it could be eliminated from the funding agreement since all they were doing is providing City money. In exchange, previously, the use agreement said they would only indemnify for their gross negligence, and "gross" was eliminated.

Chair Anderson referred to Section 3.3.1; the statement in the last sentence; "If the Foundation's funds are insufficient to meet the projected contribution expected in the Library Payment Request," and he asked that the word "expected" be replaced with "required by". He said it seems this is somewhat soft and should be more definitive if we have a requirement and not an expectation.

Vice Chair Tatzin said the ability of the Foundation to fulfill a payment request is in part dependent upon the ability of the Redevelopment Agency to pay off the loan. The Agency cannot assure the Foundation that it can pay the loan back because it is sub prime debt. So, given that expectation, the Foundation cannot be confident that it can fulfill the payment request; all it can do is provide its best efforts to pay off the loan.

So, at some point in the initial years, the Foundation will rely on proceeds other than the loan payments, but at some point they will rely on them. If the Agency cannot float bonds in 2014, they will not have money to pay the City back, so this is how they came to the wording, "expected" versus "required" and he rather suggested using, "projected contribution stated in the Library Payment Request" which he felt was factual.

Chair Anderson questioned if this was sufficient and City Attorney Subramanian agreed, with the knowledge that the Agency may not get the full request. Agencymember Anduri agreed with using the word, "stated."

<u>Revised Loan Agreement:</u>

Vice Chair Tatzin said the revised copy is redlined only against the version in the packet.

Chair Anderson said he was not clear on difference of the bonds being issued prior to June 30, 2016 versus after that date. Vice Chair Tatzin said the financial model they have done to anticipate payment of the loan back to the Foundation and then the Foundation's subsequent payments to the City under the Funding Agreement contemplated a bond sold by the RDA in the 2016 year of about $8 million. $4 million would go to reduce the debt to the Foundation. The amortization schedule is then built on that. For whatever reason you could not sell the bonds in that year, the amortization schedule then would no longer be valid. If they are not sold it is impossible to arrive at a revised amortization schedule and this is referred to in Section 3(b) and 3(c) deals with principle portions of the payments. However, the City Attorney has not reviewed these changes.

Vice Chair Tatzin said in the revised version, the loan is $9 million, and the expectation is that the proceeds from the Valley Foundation of $1.5 million would be lent to the City and payments would be held as a capital refurbishment fund. Therefore, when the money is repaid and the building needs a new carpet or roof, the Foundation would be able to provide that money to the City to make those refurbishments, which is consistent with the Valley Foundation's goal to have money for capital projects as opposed to operating, and includes it in the loan.

Agencymember Anduri questioned and confirmed that the first payment would be a $4 million payment, and at the next meeting amortization payments would be in place. Agencymember Anduri suggested putting gin June 30, 2016 because if it is issued on May 31, 2016,there would be interest paid, and Vice Chair Tatzin agreed to revise this, but the intent was not to pay it until June 30, 2017.

Use Agreement:

Executive Director Falk said Section 2.1.4 calls for the Community Hall and the Arts and Science classrooms to be made available to the City for all Monday evenings and Tuesday evenings that follow a Federal Holiday, and he and Ann Merideth have met with the architect and interior designer and directed them to configure the furniture such that it is portable or modular and can be moved around. The implication is that on the first Monday of each month, the Circulation Commission would meet in the Community Hall while the DRC meets in the Arts and Sciences classroom, so there would be a slight change to the Commission schedule. This was a deal promoted by the Foundation for them to use it on Thursday nights which would help offset the expense of the building. He said this may lead to conflicts because there might be an appeal of a DRC item and they might be meeting at the same time.

Chair Anderson said the only concern he had would be that we find ourselves using the Sequoia Room as a secondary room for meetings and closed sessions and he was not sure if the other room is used by some other committees. Executive Director Falk said this is correct and he reminded the Council there is a small green room off of the Community Hall that seats 8-10, but it is not big enough to hold joint meetings. He also said there is a presumption behind the use agreement that all the non-profit agencies housed will be charged a pro rata amount per month based upon our actual experience with the building. So, the total costs are totaled and divided on a square footage basis and the non-profits are billed their prorated amount. He said the Council may hear back from this, but staff does not know of another way to handle it fairly.

Chair Anderson suggested continuing the item to April 28th meeting.

ACTION: It was M/S/C (Andersson/Anduri) to continue the item to April 28, 2008. Vote: 4-0-0-1 (Ayes: Anderson, Anduri, Andersson, Federighi; Noes: None; Absent: None; Abstained: Tatzin).

Adjourn Redevelopment Agency

ACTION: It was M/S/C (Tatzin/Andersson) to adjourn the Redevelopment Agency meeting. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Andersson, Anduri, Federighi; Noes: None; Absent: None).

11. CONSENT CALENDAR

ACTION: It was M/S/C (Tatzin/Federighi) to approve the Consent Calendar Items A through O. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Andersson, Anduri, Federighi; Noes: None; Absent: None).

A. City Council Minutes

1. March 24, 2008
   Recommendation: Approve.
2. March 31, 2008
   Recommendation: Approve.

B. Ordinance 573 - GP01-06/RZ01-06CC: KO Architects (applicant), The Woodbury, LLC (owner), P1 Zoning: Request for approval to amend the planned unit development (1) reduce the project unit count from the approved eighty (80) units to a project of not less than sixty (60) units and (2) make minor changes to the building elevations. The site plan, building footprints and envelopes and landscaping plans will remain unchanged. Project Location: 3758 Mt. Diablo Blvd.. APNs 241-010-024, 033, 034, 040
Recommendation: Waive second reading of Ordinance 573 and adopt.

C. Agreement for installation and maintenance of existing landscaping between Gray Horse Investors and the City of Lafayette, for property located at 3675 Mt. Diablo Blvd. APN 241-030-033 and 241-030-034
Recommendation: Accept agreement for installation and maintenance of existing landscaping and authorize the City Clerk to record.

D. Agreement for installation and maintenance of existing and new landscaping between property owner, William J. and Margaret A. Schlinkert and the City of Lafayette, for property located at 3430 La Caminita. APN 230-040-011
Recommendation: Accept agreement for installation and maintenance of existing and new landscaping and authorize City Clerk to record.

E. Agreement for Installation and Maintenance of Existing and New Landscaping between property owner, Dan Akol and the City of Lafayette, for property located at 3660 Happy Valley Road. APN 244-160-004
Recommendation: Accept agreement for installation and maintenance of existing and new landscaping and authorize City Clerk to record.

F. Request by Lafayette Hidden Oaks, L.P. for approval of a Pedestrian Trail Wall Agreement to allow a dry stack stone wall in the pedestrian trail easement on Lot 2, 26 Sanford Lane (APN 185-430-004), to me maintained by the property owner of Lot 3, 24 Sanford Lane (APN 185-430-005)
Recommendation: Approve the Pedestrian Trail Wall Agreement and authorize its recordation. If Council decides not to approve an agreement, the developer will have to 1) remove the dry stack stone wall from the City's pedestrian trail easement and 2) reconstruct the wall on Lot 3.

G. Sunset the Parking Meter Task Force and authorize the mayor to send letter of thanks to committee members.
Recommendation: Sunset the Parking Meter Task Force and authorize the mayor to send letter of thanks to committee members.

H. Resignation of Dr. Yehuda Sherman from the Bicycle Pedestrian Advisory Committee.
Recommendation: Accept with regret.

I. Amendment to the 2008 Capital Improvement Program
Recommendation: 1) Adopt a CEQA Categorical Exemption finding under Section 15301C for the Camino Diablo Guard Rail Project and the Warner Court Traffic Calming and Safety Project and authorize staff to record a Notice of Exemption. 2) Establish a budget of $33,000 for the Camino Diablo Guard Rail Project, Project Number 014-9669. 3) Establish a budget of $46,000 for Bikeways Master Plan Implementation Project, Phase I, Project Number 014-9670. 4) Establish a budget of $86,300 for the Stanley Boulevard/Warner Court Intersection Safety Project, Project Number 014-9671.

J. Disposal of Surplus City Equipment & Vehicles
Recommendation: Declare the equipment is surplus property.

K. Appointing Members to the Lafayette Finance Review Committee and amend mission statement by adding one additional member to the Lafayette Finance Review Committee
Recommendation: Appoint Lee Burrows, Daniel Deitrick, Glenn Farrell, Michael Gilson, Deb Jansen and Elizabeth Stanners to the Lafayette Finance Review Committee.

L. Resolution 2008-13 Preliminarily Approving the Engineer's Annual Levy Report, and Declaring Intention to Levy and Collect Annual Assessments for the Core Area Landscaping and Lighting District 1979-1 for 2008/2009
Recommendation: Adopt Resolution 2008-13.

M. Resolution 2008-14 Preliminarily Approving the Engineer's Annual Levy Report, and Declaring Intention to Levy and Collect Annual Assessments for the Residential Lighting District 1979-2 for 2008/2009
Recommendation: Adopt Resolution 2008-14.

N. Encroachment Into the Public Right-of-Way Along Sweet Drive at 3290 Sweet Drive, agreement between property owner, Francis J. Dodd and the City of Lafayette. APN 236-122-0011
Recommendation: Approve encroachment agreement and authorize city clerk to record.

O. Letter dated April 8, 2008 from Jane Walsh resigning from the Emergency Preparedness Commission.
Recommendation: Accept resignation with regret and schedule recognition.

12. WRITTEN COMMUNICATIONS

A. Councilmember report on activities and consideration of matters a councilmember wishes to initiate for placement on a future agenda.

B. **Carl Anduri, Councilmember**
Efficacy of public forums
Recommendation: Discuss and direct staff.

This item was previously voted on to be held over to April 28, 2008.

C. **Carol Federighi, Councilmember**
Resolution 2008-12 appointing two members to the Crime Prevention Commission.
Recommendation: Adopt Resolution 2008-12 appointing two members to the Crime Prevention Commission.

Councilmember Federighi said the interview committee is recommending the appointment of Rita Charles and Edward Valencia.

ACTION: It was M/S/C (Federighi/Anduri) to adopt Resolution 2008-12 appointing Rita Charles and Edward Valencia to the Crime Prevention Commission. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Andersson, Anduri, Federighi; Noes: None; Absent: None).

D. Mayor Mike Anderson and Vice Mayor Don Tatzin
Summary of meeting with Tramutola Consultants; Prospects for new general funding at the November election cycle for sales tax, utility tax or business license tax
Recommendation: Discuss and direct staff.

Mayor Anderson said he and Vice Mayor Tatzin have held meetings with staff and Tramutola Consultants about the possibility of getting some survey work done on the potential of some new tax issues on the November ballot. They discussed the possibility of a sales, utility tax or business license tax, all would require a 50% majority vote and we are not sure if this is the right time. There is the sense on the part of the consultant that this might be a good time to get support on them, and the survey would occur rapidly.

City Manager Falk said beginning after the next Council meeting on April 28, staff's plan would be to bring an item to the next Council meeting requesting funding for the survey and approval to conduct the survey.

Councilmember Federighi said it seems that sales and utility taxes have been pretty well rejected by the community and that the viable one might be a business license tax. Mayor Anderson said it might make some sense to confirm what we think is going on and he believed that part of the sense is that this election will draw a wide audience and maybe those who might normally not participate, but the Council can wait and see what the results are.

Vice Mayor Tatzin said that also, while a business license tax is feasible, the rates at what communities are charging would not address the City's combination of roads, police, implementing the downtown strategic plan and other needs, whereas a utility or sales tax could.

City Manager Falk said also, the City has had four consecutive measures fail that require 2/3 approval. In their discussions, they were looking for opportunities that have passed a 50% threshold and there are only those three identified options. He said Mr. Tramutola believes for a couple of reasons this might be a good election to pass which include: 1) it is a general election and a presidential election and there are many activated Democrats this year for many reasons who are typically more likely to vote for taxes; and 2) The Acalanes High School District is planning to put a bond measure on that will require a 55% approval threshold. The prevailing wisdom has been that the City should not compete with school districts, but Mr. Tramutola believes that no only would the City not hurt the District's efforts, but that being on the same ballot could help the City's effort because the schools will activate those who have concern for the community, believe in public works and government as a solution, and he wants to test this stuff.

Councilmember Anduri said he thinks it is worth doing, but it is interesting that what we had been told was opposite this, and he questioned what the consultant would be polling for. City Manager Falk said Mr. Tramutola was sent a large packet on Thursday and he ran some numbers; He will test the strength of arguments that the City has used in the past for roads and for police and also for open space, cultural preservation, for downtown maintenance and test people's willingness to pay and their sensitivity levels.

Councilmember Federighi questioned if this could be done if the money goes into the General Fund, and Vice Mayor Tatzin said A would be the tax, and B would be an advisory measure only, which would say that if the tax in Measure A is approved, do you support the Council spending on certain things, which is advisory.

Councilmember Anduri said in the absence of Measure B, he confirmed with City Manager Falk that the ballot language could say, impose a 10% utility tax which could be called out to be used for the following general fund purposes which could include road repair, police, downtown maintenance and so forth, while not limiting items.

Councilmember Anduri asked how the consultant would actually test out information, and Mr. Falk said Mr. Tramutola brought in a couple of pollsters to the meeting last week who seemed very confident in their testing, he discussed the City of El Cerrito who passed a 1% sales tax for roads, Mr. Tramutola has been the political consultant on all recent successful school bonds passing and he has been running campaigns since the 1960's.

City Manager Falk agreed that at the next meeting, the consultant's proposal will detail survey costs, interviews, and other information. Councilmember Anduri said if it is possible to get it on the ballot, it will be great.

13. WRITTEN COMMUNICATIONS

A. Letter dated March 12, 2008 from Rhonda James, Executive Director for Community Violence Solutions, requesting a proclamation recognizing April as "Sexual Assault Awareness Month".
Recommendation: Discuss and direct staff.

ACTION: It was M/S/C (Tatzin/Federighi) to adopt a proclamation recognizing April as "Sexual Assault Awareness Month." Vote: 5-0-0 (Ayes: Anderson, Tatzin, Andersson, Anduri, Federighi; Noes: None; Absent: None).

14. CLOSED SESSION

A. **Conference with Legal Counsel - Existing Litigation**
Government Code section 54956.9(a)
Sterling Albert v. City of Lafayette
Case No. 1100054075
Recommendation: Discuss and direct legal counsel.

B. **Conference With Legal Counsel - Existing Litigation**
(Government Code section 54956.9(a).)
David R. Bruzzone, et al. v. City of Lafayette, et al.
Contra Costa County Superior Court Case No. C02 02145
Recommendation: Discuss and direct legal counsel.

15. REPORT FROM CLOSED SESSION

City Attorney Subramanian said the Council gave direction to legal counsel.

16. ADJOURNMENT

ACTION: It was M/S/C (Tatzin/Federighi) to adjourn the meeting at 11:45 p.m. to the next regular meeting on April 28, 2008. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Andersson, Anduri, Federighi; Noes: None; Absent: None).

APPROVED:

_____
Mike Anderson, Mayor

ATTEST:

_____
Joanne Robbins, City Clerk